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09/131,084 08/07/98 GUTH

EXAMINER

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ART UNIT

PAPER NUMBER

PM82/0723

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3672

07/23/99

DATE MAILED: *7*

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action SummaryApplication No.
09/131,084

Applicant(s)

Guth

Examiner

William P. Neuder

Group Art Unit

3672

 Responsive to communication(s) filed on Jun 11, 1999 This action is FINAL. Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims Claim(s) 1-27 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

 Claim(s) _____ is/are allowed. Claim(s) 1-27 is/are rejected. Claim(s) _____ is/are objected to. Claims _____ are subject to restriction or election requirement.**Application Papers** See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948. The drawing(s) filed on _____ is/are objected to by the Examiner. The proposed drawing correction, filed on _____ is approved disapproved. The specification is objected to by the Examiner. The oath or declaration is objected to by the Examiner.**Priority under 35 U.S.C. § 119** Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d). All Some* None of the CERTIFIED copies of the priority documents have been received. received in Application No. (Series Code/Serial Number) _____. received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

 Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).**Attachment(s)** Notice of References Cited, PTO-892 Information Disclosure Statement(s), PTO-1449, Paper No(s). 6 Interview Summary, PTO-413 Notice of Draftsperson's Patent Drawing Review, PTO-948 Notice of Informal Patent Application, PTO-152**--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---**

Art Unit: 3672

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-27 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-25 of U.S. Patent No. 5,795,105. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been considered obvious to eliminate the functional terminology "wherein said protrusions and insets have relative sizes adapted to permit relative rotation of the protrusion and the inset within which it is mated" from the claims.

Art Unit: 3672

Response to Arguments

3. Applicant's arguments filed 6/11/1999 have been fully considered but they are not persuasive. Applicant's arguments with respect to Woolford are concurred with and this rejection has been withdrawn. Applicant's arguments with respect to the double patenting rejection are not concurred with. Applicant argues that the limitation being eliminated from the claims of 5,795,105 are not functional but structurally limit the claims. While I do not agree with this argument, it does not matter if the limitation is structural or functional. The patent 5,795,105 clearly supports the claims now being made and there is no reason these claims could not have been presented in 5,795,105. Therefore, it would have been obvious to eliminate this phrase from the claims of 5,795,105.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

Art Unit: 3672

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William P. Neuder whose telephone number is (703) 308-2168.

W.P.N.

July 20, 1999

William Neuder
William Neuder
Primary Examiner